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August 27, 2010

Susan M. Hudson, Clerk
Vermont Public Service Board
112 State Street, Drawer 20
Montpelier, VT 05620-2701

Re: Docket Nos. 7523 and 7355; FERC Decision re California Feed-in Tariffs

Dear Mrs. Hudson:

Green Mountain Power Corporation respectfully submits the following comments in response to the Board's memorandum of August 3, 2010 concerning the recent Federal Energy Regulatory Commission decision in *California Public Utilities Commission and Southern California Edison Co., et al.*, Docket Nos. EL10-64-000 and EL10-66-000 (the "FERC California Ruling").

1. The Vermont legislature has enacted important renewable energy goals, including the goal of assuring that "20 percent of total statewide electric retail sales before July 1, 2017, shall be generated by SPEED resources." 30 V.S.A. § 8005(c)(2). *See also* 30 V.S.A. § 8001 (general state renewable energy goals). Vermont's SPEED Standard Offer Program, as enacted by the Vermont legislature, 30 V.S.A. § 8005, and as implemented by the Public Service Board in its orders in Docket Nos. 7523 and 7355, is designed to help achieve these statutory goals.
2. Vermont's Standard Offer Program continues to be valid, binding and enforceable state law in all respects. No party has challenged Vermont's law or the Board's implementation orders, at FERC or in any court. The FERC California Ruling did not consider or address Vermont's Program, and therefore has no direct impact on Vermont's Program. The Board and SPEED facilitator should continue to implement the Program in accordance with the existing Vermont law and the Board's orders.
3. On August 16, 2010, the California Public Utilities Commission filed a Request for Clarification or, in the Alternative, Request for Rehearing. Green Mountain Power recommends that the Board not take any action on the basis of the California Ruling until FERC rules on the CPUC's request.
4. It is important for the Board, SPEED developers and other stakeholders to be aware of, and stay informed about the FERC California proceedings. The FERC California

Ruling undeniably creates uncertainty as to whether state feed-in tariff programs could be subject to federal preemption challenges, if proceedings challenging such programs are properly initiated in appropriate forums.¹ Vermont's Standard Offer Program, however, differs in many substantive respects from the California program. These differences may limit the significance of the FERC California Ruling in evaluating Vermont's Standard Offer Program.

5. Green Mountain Power recommends that the parties potentially affected by the FERC California Ruling, including generation developers, the SPEED facilitator, Vermont's utilities, and the Department of Public Service have the opportunity to review the FERC's disposition of the CPUC's pending motion for clarification or rehearing, and then to present to the Board any recommendations regarding whether modifications to the Standard Offer Program should be considered to mitigate any uncertainties regarding the Program and to assure that the legislature's intent will be efficiently achieved.
6. Green Mountain Power believes that it is important that existing SPEED contracts under the Vermont Standard Offer Program be respected, so far as consistent with federal and state law, regardless of whether the Program is modified by the legislature or Board and regardless of whether the Program is challenged in any future proceeding. The parties entered into, and have relied upon, existing contracts in accordance with Vermont law and pursuant to the Board's implementing orders. The benefits and obligations in existing contracts made pursuant to existing, enforceable Vermont law should be respected and upheld.

Central Vermont Public Service Corporation ("CVPS") has authorized me to inform the Board that CVPS agrees with and joins these comments.

Thank you for the opportunity to provide these comments. If you have questions, or if we can provide any further assistance, please let us know.

Very truly yours,


Donald J. Rendall, Jr.

cc: PSB-Docket7533@list.state.vt.us

¹ On July 21, 2010, the National Association of Regulatory Utility Commissioners (NARUC) Board of Directors adopted a resolution supporting the States' authority to implement feed-in tariff programs. *NARUC Resolution Supporting State Authority to Adopt and Promote Feed-in-Tariff Mechanisms for Renewable and Other Generation Technologies*, July 21, 2010. In that resolution, the NARUC Board noted that FERC "has concluded that requiring public utilities to purchase power at prices established by State commissions, or to offer to make such purchases, constitutes impermissible wholesale rate-setting by State commissions pursuant to the Federal Power Act, and that under the Public Utility Regulatory Policies Act, the role of the States is limited to determining 'avoided cost' rates for qualifying facilities." *Id.* NARUC "supports the ability of individual States to determine whether or not the public utilities, under their jurisdiction, should be required to offer to purchase power at prices established by State commissions (including prices set pursuant to State feed-in tariffs) in a manner consistent with federal law." *Id.*